



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: APRIL 11, 2023

IN THE MATTER OF:

Appeal Board No. 628213

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective November 5, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to November 5, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed February 17, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. The Board has determined to take further testimony and evidence from the parties regarding the details of what documentation or combinations of documents are acceptable to comply with the federal requirements at issue. In this regard, the employer should provide a copy of the specific requirement for which the claimant's employment was ended, as well as any proof that the claimant had been provided a copy of the list of acceptable forms of identification in order to comply with these requirements. Both parties should produce copies of the documents that were provided by the claimant in an effort to meet the requirement. The employer should be questioned about why the claimant was allowed to work for four to five months if the guidelines require compliance within three business days, as well as any discretion the

employer had regarding the requirements, the time allowed for an employee to comply with the requirements, and the employer's ability to allow an employee to work without providing sufficient documentation. The claimant should be questioned regarding the different documents and combinations of documents which would have been acceptable, as well as her efforts to obtain any of these documents in order to comply with the requirements.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER